

NEBRASKA BOARD OF PUBLIC ACCOUNTANCY
140 N. 8th Street, Suite 290, Lincoln, Nebraska

Minutes
May 1, 2006

1. General

- A. Call to Order and Roll Call.** The Nebraska Board of Public Accountancy (Board) was called to order at 8:35 a.m. on Monday, May 1, 2006 with Vice Chair Jim Titus, presiding. The roll was called with the following members present: William Nuckolls, Jim Titus, Anne Fuhrman, Kate King Wu, Tom Obrist, and Richard Zacharia. Members H. Dean Graf and Doug Skiles were absent. Also present were Executive Director Dan Sweetwood, Staff members Kelly Ebert and Jo Lowe. The meeting was held at the Board Office at 140 N. 8th Street, Suite 290, Lincoln, Nebraska.
- B. Approval of Meeting Agenda for May 1, 2006.** Moved by Obrist, seconded by Fuhrman, to approve the agenda for the May 1, 2006 meeting, with the following changes noted: the Michael Walsh hearing was continued, and the Mark Nelson hearing would be at 1:30 p.m. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, and Zacharia voted aye. Members Graf and Skiles were absent. No members abstained and all present voted. Motion #1 carried.
- C. Approval of Minutes from March 16, 2006.** Moved by Nuckolls, seconded by Obrist, to approve the Board minutes from the March 16, 2006 meeting. Executive Director Sweetwood noted that portions of the March meeting minutes were struck from the record upon recommendation of Board Counsel. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, and Zacharia voted aye. Members Graf and Skiles were absent. No members abstained and all present voted. Motion #2 carried.

2. Public Comment Period (15 minute period)

Dan Vodvarka, Nebraska Society of CPAs President, was present. He expressed appreciation for the continued collaboration on legislative issues. It was also noted that the Society has a new website along with a revised version of their 2006 CPE Catalog and Member Resource Guide.

Linda Price, Columbus, NE, was present to request an extension for the CPA exam. She recently lost two passed sections because she did not pass all four sections within the 18-month rolling window. She also had provided a letter for review by the Board.

3. Consent Agenda

- A. Published Notice of Meeting.** Moved by Obrist, seconded by Fuhrman, to approve the consent agenda. On a voice vote, Members Titus, Fuhrman, King

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- Wu, Nuckolls, Obrist, and Zacharia voted aye. Members Graf and Skiles were absent. No members abstained and all present voted. Motion #3 carried.
- B. Approval of Disbursements.** Board Secretary Nuckolls reviewed the disbursement report prepared by staff. Disbursements for February and March 2006 were approved. Board members requested that copies all open the same direction.
- C. Review of Board Budget Status Report.** The Budget Status Report was provided and Executive Director Sweetwood reported on the current FY 06 budget.
- D. Office Management Report.** The Office Management Report was provided.

4. Report of Chair

- A. Report of the Chair.** Vice Chair Titus gave the report. He reviewed the Executive Committee minutes. ED Sweetwood reviewed the recent Board audit comments in the report issued by the Nebraska Auditor of Public Accounts office. The final audit report was provided in Board member packets for review. Following discussion of the audit, the suggestion was made to have a Board member do a review to determine that the number of permits issued matches the fees received. A receipt policy developed by staff will additionally be reviewed by Chair Graf. ED Sweetwood discussed areas in the audit/exit interview that were not included in the final report. Chair Graf (via telephone) and Secretary Nuckolls attended the exit/interview on behalf of the Board. Committee assignment changes, as assigned by Chair Graf, commencing in May include Member Zacharia to the Enforcement Committee (from the Licensing Committee) and Member Obrist to the Licensing Committee effective with the next committee meetings. Board officers for 2006-2007 will be elected at the July Board meeting.
- B. Executive Committee Meeting Report**
- 1.) Moved by Obrist, seconded by King Wu, to approve QEP Chair Fuhrman to visit and review the Nevada Society peer review process in conjunction with the June Regional meeting in San Francisco. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, and Zacharia voted aye. Members Graf and Skiles were absent. No members abstained and all present voted. Motion #4 carried.
 - 2.) Following closed session discussion, moved by Zacharia, seconded by Obrist, to approve the Executive Director salary increase effective July 1, 2006. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. Member Graf was absent. No members abstained and all present voted. Motion #8 carried.
 - 3.) Moved by King Wu, seconded by Zacharia, to approve Executive Director Sweetwood to attend the CLEAR National Certification Investigator Training and Conference in VA, Sept. 12-16, 2006. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, and Zacharia voted aye. Members Graf

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and Skiles were absent. No members abstained and all present voted. Motion #5 carried.

- C. **2006 Board Member Appointment.** Board members were asked to submit names of a potential Board member from the Third Congressional District.
- D. **Open Meeting Law Amendment LB 898.** Executive Director Sweetwood updated the Board members on amendments to the Open Meetings Act within LB 898. Board members were encouraged to review the material provided in the Board packet. A copy of the Open Meetings Law is available for the public on the Board room table.
- E. **Report on To Do List.** There was no report at this time.
- F. **Other Miscellaneous Items.** There were no miscellaneous items at this time.

Closed Session

Closed Session. Moved by Obrist, seconded by King Wu, that the Board go into closed session at 9:57 a.m., for the purpose of discussing the Executive Director's performance and recommended salary increase, an update on enforcement matters involving Rodney Zwygart, Michael Walsh and Mark Nelson, and an update report of pending complaints and litigation. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion #6 carried. Member Titus repeated the matters for discussion in closed session and that the session would be limited to those matters.

Return to Open Session. Moved by King Wu, seconded by Zacharia, that the Board return to open session at 10:21 a.m. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion #7 carried.

5. Report of Enforcement of Professional Conduct Committee

- A. **Rodney Zwygart Appeal Update.** Executive Director Sweetwood reported that the case had been appealed to the Nebraska Court of Appeals and that court briefs had been filed.
- B. **Open Case/LMCO Update:**
 - 1.) Public Hearing time for Case 06-04, Mark A. Nelson, was changed to 1:30 p.m., May 1, 2006.
 - 2.) Public Hearing for Case 05-06, Michael Walsh, was continued to 1:30 p.m., July 19, 2006.
- C. **Recommended Closure of Enforcement Cases.** There were no cases to close at this time.
- D. **Report on To Do List.** There was no report at this time.
- E. **Other Miscellaneous Items.** There were no miscellaneous items at this time.

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6. Report of Continuing Professional Education (CPE) Committee

- A. Report of the Committee.** Committee Chair Nuckolls presented the report. The Committee reviewed a total of 44 courses for 2006 from February 25, 2006 to April 19, 2006. The Committee forwarded the reinstatement applications for David Horner and Gladyce Janky to the Licensing Committee for approval. The Committee reviewed a CPE sponsor application. Motion out of Committee to approve CPAmerica as a CPE sponsor. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion #10 carried.

The Committee reviewed the list of requests for CPE extensions and the list of deficiencies. Staff updated the Committee on the progress of the 2006 CPE audit. The Committee reviewed CPE waiver requests. The Board was provided an audit report, CPE deficiency list, request for extension list, and waiver requests.

Three Board members who attended the “Whistleblowers Journey” at the Qwest Center in Omaha, on April 21, 2006, sponsored by Creighton University Beta Alpha Psi, felt it was very beneficial and were impressed by Cynthia Cooper’s ethical actions as an internal auditor. The Board affirmed their decision to assist in sponsoring and attending the event with over 800 CPAs and students. Board staff and intern also attended the conference.

The CPE Ethics Roundtable has been set for July during the Committee meeting.

- B. Ratification/Denial of Staff Program Qualification Evaluations.** Motion out of Committee to approve 44 courses for 2006 from February 25, 2006 to April 19, 2006. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion #9 carried.
- C. Ratification of 2006 CPE Audit.** Committee Chair Nuckolls conducted a random review of the audit completed by staff and reported he discovered no discrepancies. Motion out of Committee to ratify the 2006 CPE audit. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion # 11 carried.
- D. Report on To Do list.** The To Dos are listed in the Committee Minutes.
- E. Other Miscellaneous Items.** There was no report at this time.

7. Report of Education & Exam (E&E) Committee

- A. Report of the Committee.** Committee Chair Skiles gave the report. The Committee requested that the exam extension request from Linda Price be discussed by the full Board. Price’s testimony earlier before the Board and her letter of request was then discussed by the Board. Moved by Skiles, seconded by Fuhrman, to deny Linda Price’s request for an exam extension. On a roll call vote,

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Members Fuhrman, King Wu, Obrist, Skiles, Titus and Zacharia voted aye. Member Nuckolls voted nay. Member Graf was absent. Motion #12 carried.

Nebraska has two former Board members on the AICPA Board of Examiners (BOE). BOE Member Bill Gaines participated in the Committee conference call and provided an update from his perspective. The Committee generally remains satisfied with the CBT and continues to monitor:

- 1.) The simulation addition and implementation for the CPA/ CBT and scoring issues;
- 2.) Exam issue information from the AICPA, NASBA and states regarding the CBT;
- 3.) Exam fee increases for 2007.

Member Obrist requested a summary of the CBT process, along with national pass rates compared to Nebraska.

- B. Exam Score Ratification.** Motion out of Committee to ratify the CPA Exam scores for the January – February 2006 window. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion # 13 carried.

- C. Report on To Do List.** There was no report at this time.

- D. Other Miscellaneous Items.** Member Zacharia visited with an Omaha educator while attending the “Whistleblower” presentation regarding concerns about the strict course subject grid interpretation of the 150-hour Rule. The educator was involved in the original creation of the 150-hour requirements. Suggestion was made to add this item to the Education Advisory Committee annual meeting agenda.

8. Report of Legislative Committee

- A. Report on Legislation.** Committee Member Titus gave the report.

1.) Temporary Practice. The Legislative Committee reviewed scenarios created by Board staff and is still reviewing the proposed rule language for temporary practice. Based on the scenario review, it was decided the committee would meet again with staff and the Nebraska Society of CPAs (NSCPA) to assist in finding any other issues before distributing a draft to the Board.

2.) Character and Fitness standards. The Legislative Committee reviewed scenarios created by Board staff and is still reviewing the proposed rule language for character and fitness standards. Again, it was decided one more meeting will be held with staff and the Society before a draft will be sent to the Board.

3.) Chapter 11 Rules Change Update. ED Sweetwood reported that he did not present enough information, in the opinion of the Attorney General’s office, to the Legislature and the Governor’s office as required by law changes in 2005. The rulemaking process will be required to start over with a scheduled public hearing for the proposed Rule change at the July 19, 2006 Board meeting.

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- B. **Report on To Do List.** Meetings will continue with the NSCPA to create and present drafts on temporary practice and character and fitness standards language.
- C. **Other Miscellaneous Items.** There were no miscellaneous items at this time.

9. Report of Quality Enhancement Program (QEP) Committee

- A. **Report of the Committee.** Committee Chair Fuhrman gave the report. She reported that the QEP process has started. Letters have been sent to firms and exemption request deadline is May 1, 2006. Committee Chair Fuhrman and staff will participate in a conference call with the Nevada Society of CPAs who currently reviews the AICPA Peer Review for Nebraska firms, to discuss the report timing issue. Chair Fuhrman will also schedule a visit to the Nevada Society.
- B. **Report on To Do List.** There was no report at this time.
- C. **Other Miscellaneous Items.** There were no miscellaneous items at this time.

10. Report of Licensing Committee

- A. **Report of the Committee.** Committee Chair Titus gave the report. The Committee recommended that PAA 1-114 related to issuance of certificates be reviewed by the attorney general's office. The Committee discussed an audit process for staff to review contingent fee disclosure forms held by firms per Rules Chapter 5. The Committee requested staff develop an informal audit of licensing process in answer to a comment from the auditor's office. The Committee presented a CPAES created sample certificate of CPA exam completion to the Board for review. The Board requested cost figures for the certificate.
- B. **Ratification of initial permits to practice issued, certificates issued, firm permits.** Motion out of Committee to approve the permits to practice, certificates, and firm permits, issued between March 14, 2006 and April 27, 2006. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist and Zacharia voted aye. No members abstained and all present voted. Members Graf and Skiles were absent. Motion # 14 carried.
- C. **Reinstatements to Active Permit, Inactive Retired Affidavits, Surrendered Certificates.** Motion out of Committee to approve the reinstatements and surrendered certificates received between March 14, 2006 and April 27, 2006.:
 - Reinstatements: David Horner, Omaha NE
Gladys Janky, Omaha NE
 - Inactive - Retired affidavits: Julie Baird, Mahwan NJ
Toufic Elkhatab, Amman Jordan
Richard Evans, Omaha NE
Richard Ewing, Indianapolis IN
Dwight Keith, Lincoln NE
Carl Patterson, Champaign IL
Robert Severson, Ord NE

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Surrendered Certificates: Lloyd Anders, Mesa AZ
Wayne Middlebrooks, Lee's Summit MO
Michelle Schmittel, Fayetteville NC
Gregory Schweiss, Rapid City SD
Gregory Vorderstrasse, South Riding VA
Kris Yoshizawa, Issaquah WA

On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist and Zacharia voted aye. No members abstained and all present voted. Members Graf and Skiles were absent. Motion # 15 carried.

- D. **Report on To Do List.** There was no report at this time.
- E. **Other Miscellaneous Items.** There were no miscellaneous items at this time.

11. Report of Executive Director

- A. **State Audit Report.** Executive Director Sweetwood reported on the audit process conducted by the Auditor of Public Accounts office and thanked the Board's Executive Committee for their participation in the process. He also acknowledged staff Kelly Ebert and Jo Lowe for providing large amounts of information to the auditors while preparing for committee meetings and a Board meeting. He noted that two of the four summary comments were not specifically related to the NBPA, and that audit suggestions will be implemented by staff.
- B. **Job Descriptions for Board Staff.** Executive Director Sweetwood reported that staff had created job descriptions including general and specific responsibilities in 2005. The goal would be to assist the Board in the event a staff member left their position.
- C. **Staffing and General Office Issues.** The permit renewal process has begun. Applications and fees are coming in rapidly. Executive Director Sweetwood has requested that NASBA information technology staff provide a third party review of the JoKel system and its progress for the Board. The ED and Information Technology Chair Skiles reviewed the Nebraska.gov monthly database update. Staff evaluations will be completed in May, and Board members comments were welcomed.
- D. **Report on To Do List.** There was no report at this time.
- E. **Other Miscellaneous Items.** There were no additional miscellaneous items.

12. New Business

- A. **National Association of State Boards of Accountancy (NASBA) Items.**
 - 1.) **NASBA Nominations.** Moved by King Wu, seconded by Skiles, to support Kathy Smith for NASBA Director at Large. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion # 16 carried. Moved by Nuckolls, seconded by Zacharia, to support Kent Smoll for NASBA Regional Director. On a

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voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion # 17 carried.

2.) **NASBA FYIs.** Various articles relating to NASBA were noted.

B. Other Miscellaneous Items. Various articles were noted related to the CPA profession as provided by staff.

5. B. 1. Public Hearing for Mark A. Nelson, Case 06-04

At 1:37 p.m., Hearing Officer and Board Member Jim Titus commenced the public hearing for Mark A. Nelson, Enforcement Case 06-04, with exhibits entered into the record. Mr. Nelson was present and represented by Counsel Adrienne Davis to answer questions. Board Counsel Robert Gemit represented the Board. The hearing ended at 2:00 p.m.

Closed Session

Closed Session. Moved by Zacharia, seconded by King Wu, that the Board go into closed session at 2:01 p.m., for the purpose of discussing the Enforcement Case 06-04/ Mark Nelson. On a roll call vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. Member Graf was absent. Motion #18 carried. Member Titus repeated the matters for discussion in closed session and that the session would be limited to those matters.

Return to Open Session. Moved by Obrist, seconded by Zacharia, that the Board return to open session at 2:02 p.m. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion #19 carried.

Closed Session

Closed Session. Moved by Zacharia, seconded by King Wu, that the Board go into closed session at 2:03 p.m., for the purpose of discussing the Enforcement Case 06-04/ Mark Nelson and pending Enforcement Case 05-12. On a roll call vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. Member Graf was absent. Motion #20 carried. Member Titus repeated the matters for discussion in closed session and that the session would be limited to those matters.

Return to Open Session. Moved by Zacharia, seconded by Obrist, that the Board return to open session at 4:14 p.m. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion #21 carried.

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5. Report of Enforcement of Professional Conduct Committee

B. Open Case/LMCO Update:

1. Hearing for Case 06-04, Mark A. Nelson. Moved by Zacharia, seconded by Obrist, to suspend the certificate and permit to practice of Mark A. Nelson until June 30, 2009 including the following provisions in the Decision and Order:

- a.) Payment of a \$1000 fine within 45 days of the Order; and
- b.) No additional violations of the Public Accountancy Act (PAA) or Title 288 Rules and Regulations during the three-year suspension or, if any, automatic revocation of his certificate and permit; and
- c.) Obtains 120 hours of CPE to reactivate his certificate and permit to practice by June 30, 2009; and
- d.) Obtains 8 hours of pre-approved ethics CPE for each year of the three-year suspension in addition to the 120 hours for re-activation; and
- e.) Returns his original certificate and permit to practice to the Board office within 45 days of the Order; and
- f.) If he does not comply with all of the provisions of the suspension Order, the Board has all remedies available as applied by the PAA.

On a roll call vote, Members Obrist, Skiles and Zacharia voted aye. Members Titus, Fuhrman, King Wu, and Nuckolls voted nay. Member Graf was absent. Motion #22 failed.

Moved by Fuhrman, seconded by King Wu, to revoke the certificate and permit to practice of Mark A. Nelson and to return both certificate and permit to the Board office within 30 days of the Order. Members Titus, Fuhrman, King Wu, Nuckolls and Skiles voted aye. Members Obrist and Zacharia voted nay. Member Graf was absent. Motion #23 carried.

13. Adjournment

Moved by Fuhrman, seconded by Nuckolls, to adjourn the meeting at 4:20 p.m. on Monday, May 1, 2006. On a voice vote, Members Titus, Fuhrman, King Wu, Nuckolls, Obrist, Skiles and Zacharia voted aye. No members abstained and all present voted. Member Graf was absent. Motion #24 carried.

Respectfully submitted by,

William C. Nuckolls
Board Secretary